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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

EVERDEAN MOORE, ETC., ET AL.,

Petitioners,

versus

KELLER INDUSTRIES, INC.,
A Florida Corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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January 4, 1991

QUESTIONS PRESENTED

1. Does either the Equal Protection Clause of the Fourteenth Amendment or the equal protection guarantees of the Fifth Amendment Due Process Clause, prohibit a United States District Court from excusing a Black juror from the venire of a civil action, where the Court is acceding to a peremptory challenge exercised by a party to the proceeding, and where the exercise of that peremptory challenge was motivated by the desire to exclude the potential juror because of his or her race?

2. Does Batson v. Kentucky, 476 U.S. 79 (1986), or the principles underlying that decision, prohibit racial discrimination in the exercise of peremptory challenges in a Federal civil action?

LIST OF PARTIES TO THE PROCEEDING

1. The following persons are Petitioners in this case: Mrs. Everdean Moore, Joseph Moore, Bobbie Amiker, Clinton Amos Moore, Annie Collins, Alma Moore McGowan, Vashti Clayton, Ella Mae Curry, Wilma Branch, Delois Thompson, and Aaron Moore.

2. Keller Industries, Inc., a Florida Corporation, is the Respondent herein.

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IN THE SUPREME COURT OF THE UNITED STATES
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versus

KELLER INDUSTRIES, INC.,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners, Everdean Moore, et al., request that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit in Moore v. Keller Industries, No. 89-4613 (5th Cir., October 10, 1990).

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit rendered on October 10, 1990, is not reported pursuant to Local Rule 47.5 of the Fifth Circuit. The unpublished opinion is reproduced as Appendix "A" to

this Petition.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1), Petitioners, having asserted below, in the Fifth Circuit Court of Appeals, and continuing to assert in this Court the deprivation of rights secured by the United States Constitution, as delineated in the Petition for Writ of Certiorari.

The judgment and opinion of the Fifth Circuit was rendered on October 10, 1990. Pursuant to Supreme Court Rule 13.1, this Petition is timely filed on or before January 8, 1991.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the following constitutional provision:

The Fifth Amendment to the United States Constitution, which provides in pertinent part:

> No person shall be . . . deprived of life, liberty, or property, without due process of law.

This case also involves 28 U.S.C. Section 1870, which provides in pertinent part:

> In civil cases, each party shall be entitled to three peremptory challenges.

STATEMENT OF THE CASE

Procedural History and Statement of Facts

This civil action was filed on February 26, 1987, by the wife of the late Rev. Amos Moore, Mrs. Everdean Moore, and their children, Joseph Moore, Bobbie Amiker, Clinton Amos Moore, Annie Collins, Alma Moore McGowan, Vashti Clayton, Ella Mae Curry, Wilma Branch, Delois Thompson, and Aaron Moore, Vol. 1 at 1. The Plaintiffs collectively will be referred to hereinafter as "the Moore family." The lawsuit was a Mississippi wrongful death action seeking to impose liability on Keller Industries, Inc., (hereinafter referred to as "Keller") for a collision between a truck owned and operated by Keller and an automobile operated by Amos

Moore on January 15, 1987, id.; see also Vol. 3 at 682-84. Amos Moore died as a result of internal brain bleeding on January 16, 1987, and the Moore family contended that this bleeding was caused by the impact of the collision, id. Federal jurisdiction was premised on diversity of citizenship, 28 U.S.C. Section 1332(a), and a jury trial was requested, id.

The case was originally tried in Meridian, Mississippi, from October 3-5, 1988, Vol. 3 at 594. The jury returned a verdict for the defense, Vol. 3 at 596. The Moore family filed a Motion for Judgment N.O.V. or, in the Alternative, for New Trial, Vol. 3 at 602. The District Court granted a new trial, ruling that it erred by failing to grant a peremptory instruction that the Keller driver was negligent as a matter of law, Vol. 3 at 646.

The case was tried a second time in Meridian, Mississippi, from May 15-17, 1989, Vol. 3 at 706. The Batson issue in the instant case arose at the second trial in May 1989. The Moore family are all Black citizens. Exhibit 2, Vol. 7 at 140. The venire was comprised of seventeen White and eight Black members. Vol. 3 at 725.[1] After voir dire examination, Keller

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[1] The members of the venire were:

1)	Cleavie Arrington	White
2)	Thomas Doherty	White
3)	Frank Rackley	Black
4)	Thomas Roundtree	White
5)	Brenda Poe	White
6)	Mary Jones	White
7)	Johnnie Wright	White
8)	Theresa Fanning	White
9)	Sam Montgomery	White
10)	Virginia Walker	White
11)	Gus Goforth	White
12)	Mildred Bonner	Black
13)	Joe Chambers	White
14)	Janie Moyer	White
15)	Edward Williamson	White
16)	Quinton Pullin	White
17)	Bessie Cheatham	Black
18)	James Jenkins	Black
19)	Lawrence Hosey	Black
20)	Trevelle McGlothlin	Black

requested the Court to strike four Black jurors for cause: Charlie Boose, Vol. 7 at 45-46, Lawrence Hosey, Vol. 7 at 46, Lifley Barlow, Vol. 7 at 46-47, and Bessie Cheatham, Vol. 7 at 47. Keller then exercised its peremptory challenges against Frank Rackley, Theresa Fanning, and Mildred Bonner, Vol. 7 at 48. Mr. Rackley and Mrs. Bonner are Black persons, Vol. 3 at 725.[2] At this point counsel for the Moore family lodged his objection to

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21)	Charlie Boose	Black
22)	Frances Rogers	White
23)	Lifley Barlow	Black
24)	David Laney	White
25)	Byron Alexander	White

[2] Originally, the Moore family considered Theresa Fanning to also be Black, Vol. 7 at 49. However, Keller was of the opinion that Ms. Fanning was White, Vol. 7 at 50, which was in accordance with Ms. Fanning's own responses on her jury questionnaire, Vol. 7 at 107. Obviously, the Batson issue in this case applies only to the exclusion of jurors Rackley and Bonner.

the defense peremptory challenges under Batson. Vol. 7 at 48.

The trial court, noting the panel opinion in Edmonson, 860 F.2d 1308 (5th Cir. 1989) which applied Batson to civil cases, opined that under Batson the defense should be made to account for its use of peremptory challenges.[3] The defense stated that it had three reasons for striking Mr. Rackley; his age (said to be in his 50s), the fact that he had a deceased parent, and the subjective factor of "nonresponsiveness." Vol. 7 at 50. As for Ms. Bonner, the defense stated that

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[3] Inasmuch as the District Court required Keller to explain the reasons for its peremptory challenges, this Court is not called upon to decide if the Moore family sufficiently made a prima facie showing under Batson. Following this Court's decisions in the Title VII context, the Fifth Circuit in criminal cases under Batson reviews only the District Court's finding of discrimination vel non. United States v. Forbes, 816 F.2d 1006, 1010 (5th Cir. 1987).

she had indicated that she had a friend or spouse who had suffered a death from trauma, that her son had been involved in an auto accident, and that she had some medical background. Vol. 7 at 51. As the Court pointed out, Ms. Bonner's later responses were to the effect that her son was a defendant in a suit involving an auto accident, Vol. 7 at 51.

The Plaintiffs made a showing of comparable factors in the jury pool, to show that the criteria alleged by the defense in response to the Batson objection were pretextual. The Plaintiffs pointed out that juror Laney, who was White, was also apparently in his 50s, but was not struck by the defense. Vol. 7 at 52. The Plaintiffs pointed out that there were several other persons who were at least in the 50 age range who were White and not struck. Id. Counsel also pointed

out that five persons, including Mrs. Bonner, had responded affirmatively to the question whether their parents had died, and yet the other four persons were not struck. Id. Finally, the Moore family objected to the use of subjective factors such as "nonresponsiveness." Id.

The Court found that it was "not satisfied that the strikes were exercised because of race. There were legitimate reasons given," Vol. 7 at 53.

At the second trial, the District Court instructed the jury to find Keller Industries to be negligent as a matter of law. The jury returned a verdict for $12,000, Vol. 3 at 715. The Moore family filed a timely Motion for New Trial, asserting that the District Court erred in allowing Keller to exercise peremptory challenges in a racially discriminatory manner, and that the damages awarded were

inadequate as a matter of law and contrary to the great weight of the evidence, Vol. 3 at 719. The District Court overruled the Motion, Vol. 3 at 769.

The Moore family filed a timely Notice of Appeal, Vol. 3 at 770. On appeal, the Moore family raised the peremptory challenge issue in its Original Brief, specifically requesting the Fifth Circuit to review the District Court's determination that the peremptory challenges exercised by Keller were not motivated by race. Keller responded by pointing out that the Fifth Circuit refused to apply the rationale of Batson v. Kentucky, 476 U.S. 79 (1986) to civil cases in Edmonson v. Leesville Concrete Company, Inc., 895 F.2d 218 (5th Cir. 1990) (en banc). In their reply brief, the Moore family recognized that Edmonson foreclosed their jury challenge argument

in the Fifth Circuit, but specifically preserved the argument for purposes of later review. The Fifth Circuit opinion did not address the issue.

REASONS FOR GRANTING THE WRIT

This Court has granted certiorari in Edmonson v. Leesville Concrete Company, Inc, No. 89-7743, ____ U.S. ____, 112 L.Ed.2d 18 (October 1, 1990), to determine the very issue presented in this case: whether racial discrimination in the exercise of peremptory challenges in Federal civil cases violates the United States Constitution. See, e.g., Batson v. Kentucky, 476 U.S. 79 (1986). The Circuit Courts of Appeals are divided on this critical issue. See Dunham v. Frank's Nursery & Crafts, ____ F.2d ____, 1990 WESTLAW 198907 (7th Cir., December 12, 1990) (applying Batson to civil cases

under the Fifth Amendment's equal protection guarantees); Fludd v. Dykes, 863 F.2d 822 (11th Cir. 1989) (same); Reynolds v. City of Little Rock, 893 F.2d 1004 (8th Cir. 1990) (applying Batson to civil cases when a State agent is a party litigant); Dias v. Sky Chiefs, Inc., ____ F.2d ____, 1990 WESTLAW 181147 at n.5 (9th Cir., November 27, 1990) (refusing to extend the Batson rationale).

Because the Fifth Circuit had previously opined that the discriminatory exercise of peremptory challenges does not violate the constitution, Edmonson, 895 F.2d 218 (5th Cir. 1990), it made no attempt to review the District Court's determination in this case that Keller gave non-racial justifications for its peremptory challenges. Certainly, if Batson applies to civil litigants in District Court, the trial court's ruling

in this case should have been reviewed by the Fifth Circuit. Unquestionably, the Petitioners here, all Black citizens, have standing to raise the Batson claim. Indeed, the District Court so found by requiring Keller to provide race-neutral explanations for the peremptory challenges. The standard of review to be applied to a trial court's findings of nondiscrimination is to be elucidated by this Court in another case this term, Hernandez v. New York, No. 89-7645, cert. granted, ____ U.S. ____, 112 L.Ed.2d 201 (October 9, 1990).[4] However, the Court of Appeals clearly must provide some review of the District Court's ruling, Batson,

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[4] The second question on which certiorari was granted in Hernandez is: "[w]here a trial court has accepted the prosecutor's proferred explanation as being race neutral, what standard of review is to be applied by reviewing courts?" Hernandez, 112 L.Ed.2d at 202.

476 U.S. at 98n.21. The Fifth Circuit's failure to do so here mandates reversal, if Batson's prohibition against racially discriminatory peremptory challenges applies to civil litigants in Federal Court.

CONCLUSION

This Court should hold this Petition in abeyance pending the outcome of Edmonson, and should grant the writ in this case, upon the reversal of the Fifth Circuit in Edmonson, or, in the alternative, upon this Court's inability to reach the merits of the Batson issue in Edmonson.

Respectfully Submitted,

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APPENDIX "A": FIFTH CIRCUIT OPINION

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 89-4613

EVERDEAN MOORE, ETC., ET AL.,

Plaintiffs-Appellants
Cross-Appellees,

versus

KELLER INDUSTRIES, INC,
A Florida Corporation,

Defendant-Appellee,
Cross-Appellant.

Appeal from the United States
District Court for the
Southern District of Mississippi
(CA-E87-0018(L))

(October 10, 1990)

Before POLITZ, WILLIAMS, AND SMITH, Circuit Judges.

PER CURIAM:

This matter is before the court on

appeal of the grant of a new trial to the plaintiffs after the first trial of this cause, as well as on appeal of the verdict for plaintiffs following the retrial. After considering the briefs and oral arguments of counsel, in light of the relevant portions of the record of the two trials, and concluding that there was neither error nor abuse of discretion in the grant of the new trial or in any ruling relative to the new trial, and further finding that the jury verdict is supported adequately by the evidence and is consistent with controlling principles of law, the judgment is AFFIRMED in all respects.

APPENDIX "B": EXCERPT FROM BRIEF OF PETITIONERS IN FIFTH CIRCUIT

Beginning at Page Ten:

In Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), the United States Supreme Court held that the equal protection clause of the Fourteenth Amendment prohibited State action which caused black jurors from being excluded from trial juries by means of peremptory challenges exercised against them due to their race. Although Batson itself was based upon the Fourteenth Amendment, it is clear that the Fifth Amendment prohibits racial discrimination in Federal jury selection, United States v. Leslie, 813 F.2d 658 (5th Cir. 1987).

This Court, in Edmonson v. Leesville Concrete Co., Inc., 860 F.2d 1308 (5th Cir. 1988)(pending en banc consideration),

held that judicial administration and enforcement of peremptory challenges based on race constitutes State action. Therefore the Edmonson Court concluded that the racially discriminatory exercise of peremptory challenges violates Batson, even in a civil action. This Term, a majority of the United States Supreme Court characterized Batson as protecting the rights of jurors not to be excluded from jury service based upon their race, Holland v. Illinois, ___ U.S. ___ (January 22, 1990) (See separate opinions of Kennedy, J., Concurring, and Stevens and Marshall, JJ., Dissenting). The Moore family submits that the rationale of the Edmonson panel opinion is strengthened by this recognition. If the right protected by Batson is held by the juror instead of

a criminal defendant,[1] then all State actors which facilitate and enforce racial discrimination against the juror are susceptible to equal protection analysis. See, e.g., Shelley v. Kraemer, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1949).

Under Edmonson, a prima facie case under Batson is made where one party is a member of a cognizable racial group, and the opposing party exercises peremptory challenges to remove members of that racial group from the venire, Edmonson, supra, 860 F.2d at 1315. Of course, a timely objection based on Batson must be made, Thomas v. Moore, 866 F.2d 803 (5th

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[1] Under this theory, the party protesting the racially discriminatory exclusion of the juror has standing to raise the violation of the juror's rights under the "third party standing" principle set forth in Singleton v. Wulff, 428 U.S. 106, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1972).

Cir. 1989).[2]

The Batson issue in the instant case arose at the second trial in May 1989. The Moore family are all Black citizens. Exhibit 2, Vol. 7 at 140. The venire was comprised of seventeen White and eight Black members. Vol. 3 at 725. . . . After voir dire examination, Keller requested the Court to strike four Black jurors for cause: Charlie Boose, Vol. 7 at 45-46, Lawrence Hosey, Vol. 7 at 46, Lifley Barlow, Vol. 7 at 46-47, and Bessie Cheatham, Vol. 7 at 47. Keller then

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[2] Under Batson, the objection is timely if made before the venire is dismissed and prior to commencement of trial, United States v. Romero-Reyna, 867 F.2d 834 (5th Cir. 1989). But cf. United States v. Cartledge, 808 F.2d 1064 (5th Cir. 1986) (Batson challenge made on Motion for New Trial sufficient in case tried before Batson decision but not yet final at time of Batson). In the instant case, the objection was made immediately after Keller exercised its peremptory challenges, Vol. 7 at 48.

exercised its peremptory challenges against Frank Rackley, Theresa Fanning, and Mildred Bonner, Vol. 7 at 48. Mr. Rackley and Mrs. Bonner are Black persons, Vol. 3 at 725.[3] At this point counsel for the Moore family lodged his objection to the defense peremptory challenges under Batson. Vol. 7 at 48.

The trial court, noting the Edmonson decision, opined that under Batson the defense should be made to account for its use of peremptory challenges.

. . . .

The Plaintiffs made a showing of comparable factors in the jury pool, to

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[3] Originally, the Moore family considered Theresa Fanning to also be Black, Vol. 7 at 49. However, Keller was of the opinion that Ms. Fanning was White, Vol. 7 at 50, which was in accordance with Ms. Fanning's own responses on her jury questionnaire, Vol. 7 at 107. Obviously, the Batson issue in this case applies only to the exclusion of jurors Rackley and Bonner.

show that the criteria alleged by the defense in response to the Batson objection were pretextual.

. . . .

The Court found that it was "not satisfied that the strikes were exercised because of race. There were legitimate reasons given," Vol. 7 at 53.

The Batson Court set forth the basic procedure for evaluating a claim of discriminatory peremptory challenges, with several references to the well settled burden of proof rules in the employment discrimination context. Batson, 476 U.S. at 94n.18, 90 L.Ed.2d at 86n.18 [citing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 688 (1973) and Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981)]. Where the objecting party has set out a prima facie

case of discrimination, the party exercising the peremptories must articulate "a neutral explanation related to the particular case to be tried," Batson, 476 U.S. at 98, 90 L.Ed.2d at 88. The objecting party then has the ultimate burden of proof to show discrimination. Of course in the employment discrimination context, under McDonnell Douglas and Burdine the party charging discrimination may offer proof that the articulated neutral reasons are pretextual. See Burns v. Texas City Refining Inc., 890 F.2d 747 (5th Cir. 1989); Burdine, supra, 450 U.S. at 253-56, 101 S.Ct. at 1093-95.

Several State Supreme Courts have taken up the issue of evaluating whether the articulated neutral grounds given for peremptory challenges are pretextual. The Florida Supreme Court recognized in Slappy v. State, 522 So.2d 18 (Fla. 1988), that

without some guidelines for determining pretext, Batson would be a toothless guarantee of racial equity. That Court affirmed the opinion of one of Florida's District Courts of Appeal in setting forth five factors weighing against the legitimacy of the proffered "race-neutral" explanations: 1) the explanation is an alleged group bias not shown to be shared by the juror in question; 2) the party exercising the challenge failed to examine the juror or conducted only a perfunctory examination of the juror; 3) the party exercising the challenge singled the juror out for special questioning designed to evoke a certain response; 4) the proferred explanation for the peremptory strike is unrelated to the facts of the case; and 5) the proferred explanation is equally applicable to jurors not challenged.

Several other State Supreme and

Appellate Courts have implemented similar standards. Ex Parte Branch, 526 So.2d 609 (Ala. 1987); People v. Turner, 726 P.2d 102 (Cal. 1986); State v. Collier, 553 So.2d 815 (La. 1989); State v. Antwine, 743 S.W.2d 51 (Mo. 1987); Keeton v. State, 749 S.W.2d 861 (Tex. Crim. App. 1988); State v. Gilmore, 511 A.2d 1150 (N.J. 1986).

In this case, the District Court insufficiently examined the explanations given by Keller. With regard to juror Rackley, the first stated justification for the peremptory challenge was his age, estimated by Keller to be in his 50s. Vol. 7 at 50. However, it was not disputed that a White juror, Mr. Laney, also appeared to be elderly, and that several other jurors in the 50s age range were seated as jurors. Vol. 7 at 52. Further, counsel for Keller engaged in no

questioning in voir dire as to whether jurors could put aside any similarities of age with Plaintiffs' decedent in deciding the case. Indeed, counsel for Keller asked no questions regarding age to the panel, not even bothering to ask the jurors their ages.

The second stated rationale for the Rackley strike was that he had a deceased parent. Vol. 7 at 50. Although this question on voir dire was asked by the Plaintiffs, Vol. 7 at 32-33, counsel for Keller asked no follow up questions in this vein. It was undisputed that five persons on the venire responded affirmatively to these questions, Vol. 7 at 52, yet only two of these were struck by Keller.[4]

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[4] In this connection, it is noteworthy that the other peremptory challenge used by Keller was exercised on totally subjective grounds only. Vol. 7

The third justification for the Rackley strike was the general, subjective one of "nonresponsiveness." Such subjective, non case-specific rationales are highly disfavored, Collier v. State, 553 So.2d 815 (La. 1989). It may very well have been that few of the questions asked in voir dire applied to Mr. Rackley. Indeed, counsel for Keller himself asked no specific questions of Mr. Rackley. This grounds is not a "clear and reasonably specific" explanation of Keller's peremptory challenge, see United

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at 50. Had Keller been sufficiently concerned about the five venire members whose parents or close friends had died, this totally subjective strike could have been used to excuse one of them. However, Keller struck only the two Black jurors for this reason, demonstrating it to be a pretext. See State v. Butler, 731 S.W.2d 265, 269 (Mo. App. 1987) (peremptories are "highly suspect" if unchallenged White jurors have same characteristics as are used to justify strikes against Black jurors).

States v. Romero-Reyna, 867 F.2d 834, 837 (5th Cir. 1989).

As to juror Rackley, then, Keller's explanations fail when compared to the criteria set forth in Slappy, Branch, Antwine, and other post-Batson cases. The "age" and "deceased parent" justifications are based upon an alleged bias shared by those groupings which was never demonstrated to be held by Mr. Rackley. Keller asked no questions of Mr. Rackley. The grounds of "nonresponsiveness" were vague, subjective, and non case-specific. Finally, the "age" and "deceased parent" criteria were shown to apply equally to White jurors who were not challenged by Keller. Therefore, the District Court erred in finding that the peremptory challenge exercised against Mr. Rackley

was not based on race.[5]

The first reason given by Keller for striking Mrs. Bonner was that she had responded affirmatively to the inquiry regarding a deceased parent or spouse. Vol. 7 at 51. In addition to the comparative facts stated above on this same "criteria" for Mr. Rackley, the Court may note that, while counsel for Keller questioned Mrs. Bonner on some issues, Vol. 7 at 43, he asked her not a single question about this deceased relative. Once again, it is undisputed that five

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[5] The nature of this error may be considered under two separate standards of review. The Moore family contends that the District Court's failure to subject the Keller peremptories to any meaningful "pretext" analysis is an error of law as to which this Court need afford no deference. Alternatively, the District Court's acceptance of the reasons given for the Keller peremptories in the face of the comparative evidence showing those reasons to be pretexts for racial discrimination was clearly erroneous.

jurors responded to the question regarding deceased loved ones, Vol. 7 at 52.

Interestingly, Keller alleged that Mrs. Bonner's "medical knowledge" was one of the grounds for the exercise of a peremptory challenge against her, Vol. 7 at 51. Mrs. Bonner was a nurses' aide, Vol. 7 at 34. By contrast, Virginia Walker, a White juror, Vol. 3 at 725, was an LPN, Vol. 7 at 33, and was seated as a trial juror, Vol. 7 at 48, with no objection or peremptory challenge by Keller. Indeed, Ms. Walker had extensive emergency room experience, Vol. 7 at 33, which would give serious pause to a party genuinely concerned about specialized knowledge in a automobile accident/ wrongful death case. Frances Rogers, a White juror, Vol.3 at 725, was a dietitian in Jasper General Hospital in Bay Springs, Mississippi, Vol. 7 at 33-34, and was

seated as a trial juror, Vol. 7 at 48, with no objection or peremptory challenge by Keller.

Finally, Keller claimed that the fact that Mrs. Bonner's son had an automobile accident was a grounds for peremptory excusal, Vol. 7 at 51. However, as Keller's own questioning indicated, Vol. 7 at 43, and as the Court below noted, Vol. 7 at 51, her son is a defendant in a civil action involving an automobile accident. Any bias Mrs. Bonner would have had from that experience would have inured to Keller's benefit.

Once again, the rationales used by Keller to support the challenge to Mrs. Bonner's being seated as a trial juror fail in the face of scrutiny. No questions were asked Mrs. Bonner to determine whether the alleged bias shared by persons whose parents or loved ones had

deceased in favor of the Moores was actually held by Mrs. Bonner. The use of the "medical knowledge" rationale, which was manifestly pretextual in light of Keller's acceptance of jurors Walker and Rogers, highlights Plaintiffs' claim of discriminatory jury challenges. Finally, the automobile accident rationale, as shown above, demonstrated no threat of bias against Keller. Quite the contrary, if there was any fear of bias, it should have been felt by the Moore family in light of the lawsuit pending against Mrs. Bonner's son. Therefore, the District Court erred in finding that the peremptory challenge exercised against Mrs. Bonner was not based on race.

The allowance by a District Court of a single peremptory challenge exercised on account of race is reversible error. See United States v. Clemons, 343 F.2d 741 (3d

Cir. 1988); United States v. David, 803 F.2d 1567 (11th Cir. 1986). Therefore, should this Court hold that the District Court erred with respect to either Mr. Rackley or Mrs. Bonner, the judgment below should be reversed and the cause remanded to the District Court for new trial.